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RUEHRL/AMEMBASSY BERLIN 0405
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C O N F I D E N T I A L SECTION 01 OF 02 NOUAKCHOTT 000760

SIPDIS

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TAGS: [PREL](#) [PGOV](#) [MR](#)

SUBJECT: CONSTITUTIONAL COUNCIL STICKS TO ITS LIMITED GUNS

REF: A. NOUAKCHOTT 744

[1](#)B. NOUAKCHOTT 442

Classified By: Charge d'Affaires Dennis Hankins for reasons 1.4 (b and d)

[1](#)1. (C) Summary: The High Constitutional Council exercised its limited oversight role in rejecting some of the National Assembly changes designed to kick out Assembly President Messaoud Ould Boulkheir. The Council exercises "pragmatic legalism" under the "exceptional" constitutional circumstances but has already signaled that the Regime's efforts for constitutional change through a National Dialogue on Democracy will not, by itself, pass constitutional muster. The President of the Council sees constitutional order being established only through the return of the elected president and hopes both sides will find a way for that to happen -- even if just temporarily. End Summary.

[1](#)2. (C) Shooting Down the Regime's Plans: Charge met December 21 with President of the High Constitutional Council Abdoullah Ould Ely Salem and Vice President Taki Ould Sidi. Ely Salem welcomed the Charge's visit, the second since the coup (see Reftel B on previous meeting with Ould Sidi in August), noting the U.S. was the only diplomatic mission to visit since the 2005 transition. Charge took the opportunity to praise the Council for maintaining its independence in its decision to strike down National Assembly efforts to force the ouster of National Assembly President Messaoud Ould Boulkheir (REFTEL A). Ely Salem noted the decision "had gotten everyone upset" but added that the Council had only done what it is charged to do -- review changes in "organic law" to determine its constitutionality. He noted that the Council had not ruled on the constitutionality of either the current ordinary session of the National Assembly nor on the previous "emergency session" because the Council has no legal standing for such a determination -- despite Ould Boulkheir's assertion that both sessions are illegal. The Council had reviewed the proposed changes in the internal workings of the National Assembly accepting that the changes had been adopted by a legal majority of the chamber. That said, the Council had found two significant changes as unconstitutional -- Article 12 which would have forced deputies to elect the officers of the National Assembly by show of hands instead of secret vote (which would have resulted in unconstitutional pressure on the deputies); and Article 17 which would allow the President of the National Assembly to be voted out (a violation of his 5 year mandate that can only be ended through resignation or death). Ould Sidi noted that the

National Assembly had tried twice before to establish a public vote for the leadership of the chamber and had been shot down by the Council every time. He added that the vote of the Council this time was unanimous.

13. (C) A Limited Role: Ely Salem noted that the constitution allows the High Constitutional Council very limited jurisdiction but that, within those confines, the Council has frequently gone head-to-head with previous regimes. He added, "there are many things we might disagree with where we have no legal voice." He said the Council "noted" the presence of the High State Council (HSC) as the "effective power" but it had no standing to speak to its constitutionality nor that of its Constitutional Charter. When asked what, if any, legal standing might have, Ely Salem responded "even Aziz has said 'there is no president,'" so the HSC could, at best, take the powers but not the legitimacy of the president's office. Ould Sidi noted that the Council was designed to be both juridical and pragmatic in its work as reflected in a membership that had both jurists and former ministers in its membership. He noted that, "we have spent most of our history with military governments "of exception" with military leaders either in uniform or hiding in civilian suits," that has generally limited the Council's role.

14. (C) Not So Fast On The National Dialogue: Charge asked whether, from a constitutional perspective, there was any way the upcoming National Dialogue on Democracy could be used to change the constitution as seemed to be the plan. Ely Salem noted a constitutional change could be done legally only

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through a referendum (which can only be initiated by the president -- an office that Aziz cannot rightly claim to occupy) or by a two-thirds majority of the combined National Assembly and Senate. The National Dialogue did not constitute a legitimate mechanism for constitutional change and Ely Salem suggested Aziz would be unable to get the necessary votes in the parliament. Ely Salem added, "the Council does not believe now is an appropriate time to discuss constitutional change. Laws -- and especially the constitution -- should be politically neutral and not changed for the short term benefit of one faction or another."

15. (C) Return to Constitutional Order: Charge noted the ongoing debate about what could constitute a "return to constitutional order." A debate in which the U.S. held could only be met by the return of the elected president -- recognizing political arrangements could be worked out later. Ely Salem agreed that "the U.S. position is the best legally," adding that it would be very problematic to go forward with new elections "if the President does not grant his consent." That said, he added, "Neither side seems to be moving from their positions -- Aziz won't accept he was fired and the President is closed to negotiation. Neither is working in the interests of the Mauritanian people who can only suffer from this political deadlock." Ely Salem suggested the best solution was for Abdallahi to get a firm commitment for the military's exit from politics and then accept early elections -- either by resigning in favor of the President of the Senate once coming back to office or serving only for the time needed to organize those elections.

16. (C) Comment: Despite its constitutionally and, it seems, self-imposed mandate limits, the High Constitutional Council has complicated General Aziz' efforts to manipulate the National Assembly and seems poised to block the National Dialogue on Democracy if it has the right legal hook. The Council is too weak to reverse coups, but it can prevent them from gaining democratic legitimacy. End Comment
HANKINS